IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.564 OF 2007
IN
APPEAL NO.555 OF 2005
IN
SUIT NO.2812 OF 2001

Jayesh Pandya ..Appellant.
Vs.
Sukanya Holdings Pvt. Ltd. & Ors. ..Respondents.

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Shri D.D. Madan, Senior Advocate with Shri J.P. Sen i/b Jacinta D'Silva for the Appellant.

Ms. Swati Sawant for Respondent No.1.

Ms. Jyoti Chavan for Respondent No.9 in support of the Notice of Motion.

Shri D.V. Devkar, 1st Assistant to Court Receiver present.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

9th March, 2007.

P.C. :

1. The Notice of Motion has been taken out by the 9th Respondent seeking deletion of the direction given by the Court Receiver on 20th January, 2007 for the execution of an agency agreement by the Applicant in respect of Flat No. 301.

2. By an order dated 1st February, 2006 passed by the Division Bench in the Appeal, the Receiver appointed earlier for the property in dispute was directed to continue pending disposal of the Notice of Motion. The Court directed that parties in possession will, however, continue to be in possession. Subsequently, by an order dated 19th September, 2006, the Division Bench issued certain directions in Notice of Motion 1900 of 2005. In so far as is material, the directions contained in Clauses (i) and (ii) of the order read as under :

> (i) The Court Receiver appointed earlier for the subject property shall continue pending the disposal of the Appeal.
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> (ii) Save and except the flat Nos. 401 and 402, the parties in possession of the respective flats shall continue to remain in possession without payment of royalty and security to the Court Receiver. It is clarified that if any of the occupants of such flats vacate the said flat, the information in that regard shall be furnished to the Court Receiver and permission of the Court shall be obtained before inducting any other person by the concerned party in such flat."

3. The Applicant has objected to the directions issued by the Court Receiver calling for an execution of the agency agreement. On behalf of the Applicant it has been submitted that the Court Receiver who was appointed during the pendency of the proceedings before the Learned Single Judge was discharged by

an order dated 30th January, 2005. The discharge of the Court Receiver by the order of the Learned Single Judge will not be of avail to the submission of the Applicant for the reason that thereafter it has been specifically directed by the Division Bench that the Court Receiver who was appointed earlier shall continue to act as such pending the disposal of the Appeal. In so far as parties who were in possession of the respective flats are concerned (save and except for flats 401 and 402), the order provides that these parties shall continue to remain in possession without payment of royalty and security to the Court Receiver. The property being custodia legis it is only necessary that a formal agency agreement be executed even if the parties in possession are not required to pay royalty or furnish security. The execution of the agreement is necessary to ensure that all the other usual terms and conditions are fulfilled so as to ensure that the property is properly secured during the pendency of the Appeal. The execution of the agency agreement by the Applicant, shall however be without prejudice to such rights and contentions as the Applicant would be entitled to urge at the final disposal of the Appeal. In our view, it is necessary that the agency agreement must be executed both by the party legally in possession of the flat concerned as well as by the actual

occupant of the flat. The agency agreement shall be executed by whoever is permitted by the earlier order of the Court to remain in possession as an actual occupant. In the circumstances, we find no merit in the Notice of Motion which is accordingly dismissed.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)